IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.5121 OF 2005

Mrs. Smita Naresh Mody..Petitioner

Versus

M/s.Oriental Bank of Commerce & Ors...Respondents

Mr.N. Engineer i/b. RMG Law Associatee, for the Petitioner
Mr. Minesh K. Shah i/b. Bharat & Chinchkar for the respondent No.1.

CORAM: F.I. REBELLO &
DR. D.Y.CHANDRACHUD, JJ.
DATE : 19th January,2006

P.C.:

. When an auction was held by respondent No.1 asseets of respondent Nos. 2 to 6 judgment debtors were purchased by the petitioner herein. That sale was confirmed and the petitioner paid the amount.

2. After the petitioner took possession, much after 30 days as contemplated by Rule 61 of the second schedule to the Income Tax Act the petitioner filed an objection contending that the carpet area was only 705.06 sq.ft whereas the devertisement wrongly showed 990 sq.ft. The petitioner, therefore, prayed to set aside the sale and for refund of the amount.

3. Reply was filed on behalf of the respondent bank. The Recovery Officer by order dated 14th July, 2004 was pleased to reject the application. While rejecting the application the Recovery Officer was pleased to consider Rule 61 of the second

Schedule to the Income Tax Act and the provisions of Order 21 Rule 90 of the Code of Civil Procedure. The Recovery Officer held that opportunity was given to the petitioner herein for inspecting the property and thereafter came to the conclusion that the petitioner was unable to make out a case that he sustained substantial injury and dismissed the Application.

4. Against the order of the Recovery Officer an Appeal was preferred being Appeal No.76 of 2004 before the D.R.T. The learned D.R.T. addressed itself the question that it appears to be a case of misdescription of the property and posed itself the question as under:- The question is whether the mis-description is material irregularity".

After considering the contention and the judgments cited the D.R.T. dismissed the Appeal. 5. Against that order a Miscellaneous Appeal was preferred before the D.R.A.T. being Misc. Appeal No.387 of 2004 which chose not to interfere with the order of the D.R.T. It is against that order the petitioner approached this Court. 6. At the hearing of this petition on behalf of the petitioner learned Counsel states that they are not pressing the relief for setting aside the sale. It is, however, submitted that considering the fact that the advertisement set out that the area to be 990 sq.ft. and what has come in the possession is 705.06 sq.ft. they should be entitled to prorata deduction and for refund of the amount. 7. In the advertisement which was issued 990 sq.ft. was not described either as carpet area, built up area

or super built up area. The petitioner did not take any steps to find out as to whether in the corrigendum as issued to the sale the area which was being offered for sale was carpet area or built up or super built up. The property was to be taken on "as is where is basis". The petitionr also took inspection of the property. Apart from that, this Court can take note of the fact that unless there was a specific notice to the petitioner that what was being sold was carpet area, the petitioner now cannot contend that he understood 990 sq.ft. to mean carpet area only. The Court can take judicial note that in the island city of Mumbai what is being sold is normally super built up area.

8. Considering the orders of the Tribunals below and the fact that the parties had notice that what was being sold was 990 sq.ft. and as petitioner took no steps to verify whether it was carpet area only we do not think this to be a fit case where this Court should grant any relief as sought for by the petitioner. Petition rejected.

(F.I.REBELLO, J.)

(DR. D.Y.CHANDRACHUD, J.)